

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-E) for an Order Implementing Assembly Bill 265.

Application 00-10-045
(Filed October 24, 2000)

Application of San Diego Gas & Electric Company (U 902-E) for Authority to Implement an Electric Rate Surcharge to Manage the Balance in the Energy Rate Ceiling Revenue Shortfall Account.

Application 01-01-044
(Filed January 24, 2001)

ASSIGNED COMMISSIONER'S RULING GRANTING, IN PART, MOTION TO STRIKE MOTION FOR ADOPTION OF STIPULATION; DESIGNATING STIPULATION A JOINT PROPOSAL; AND PROVIDING FOR COMMENTS

Introduction

On October 10, 2001, six parties (Stipulating Parties) filed a motion requesting Commission approval of a stipulation that would resolve many of the issues in these consolidated applications of San Diego Gas & Electric Company (SDG&E). The Stipulating Parties are the Office of Ratepayer Advocates, Federal Executive Agencies, California Farm Bureau Federation, Aglet Consumer Alliance, Utility Consumers' Action Network, and The Utility Reform Network. The stipulation is, in effect, an alternative to the June 18, 2001 Memorandum of Understanding (MOU) of SDG&E, its parent corporation Sempra Energy, and the California Department of Water Resources (DWR).

On October 12, 2001, SDG&E filed a motion to strike the Stipulating Parties' October 10 motion. Stipulating Parties filed a response to the motion to

strike on October 19, 2001. This ruling grants in part SDG&E's motion to strike on the grounds that the proffered stipulation fails to qualify for processing under Article 13.5 of the Commission's Rules of Practice and Procedure. However, subject to the concurrence of the Stipulating Parties, and subject to certain limitations on the scope of further review, the stipulation will be designated a Joint Proposal and processed as such before the Commission. This ruling provides for comments and replies on said Joint Proposal.

Article 13.5 – Stipulations and Settlements

The Commission's procedural rules governing stipulations and settlements are set forth in Article 13.5 of the Rules of Practice and Procedure (Rule 51, *et seq.*). On September 21, 2001, pursuant to Rule 51.1(b), certain of the Stipulating Parties filed and served notice of a settlement conference to be held on October 1, 2001. According to the notice, the purpose was "to discuss an alternate plan for resolving the SDG&E balancing account while adhering to a set of principles [described in the notice]." On September 28, 2001, Aglet served a draft settlement agreement on all parties by electronic mail. The settlement conference was convened on October 1, 2001. In addition to five of the six Stipulating Parties, SDG&E and the City of San Diego attended.

Stipulating Parties filed the motion and the attached stipulation on October 10, 2001. Stipulating Parties state that they "advocate this Stipulation instead of a settlement agreement because Rule 51(c) requires that settlements be signed by the applicant." (October 10 motion, p. 7.)

In its motion to strike, SDG&E contends that notwithstanding its ostensible title as a stipulation, the Stipulating Parties' proposal is in fact a settlement. SDG&E contends that since Rule 51(c) requires that settlements be signed by

applicants, and it declines to do so, the proposal cannot be processed under the settlement rules.

Rule 51(d) defines “stipulation” as an agreement between some or all of the parties to a Commission proceeding on the resolution of any issue of law or fact material to the proceeding. Rule 51(c) defines “settlement” as an agreement between some or all of the parties to a Commission proceeding on a mutually acceptable outcome to the proceeding. The proffered stipulation clearly proposes outcomes to various proceedings and is therefore a settlement under the Commission’s Rules of Practice and Procedure, but applicant SDG&E has not signed the document. Accordingly, it cannot be processed as either a stipulation or a settlement under Article 13.5. SDG&E’s motion to strike should therefore be granted in part. However, as explained in the following section, elements of the proposal can and will be considered by the Commission.

August 2 Ruling

As additional grounds for striking the Stipulating Parties’ motion, SDG&E asserts that the motion is contrary to the process for addressing the SDG&E/Sempra/DWR MOU that was established in my August 2, 2001 ruling. That ruling set target dates for consideration of various “Implementing Decisions” related to the MOU with an overall objective of resolving the Implementing Decisions by the end of this year. The ruling also set an oral argument on August 16, 2001 to consider the merits of the MOU.

SDG&E correctly notes that the August 16 oral argument provided an opportunity for parties to make comprehensive counterproposals to the MOU, and that no subsequent ruling or statement has provided further opportunity to do so. Nevertheless, I am persuaded that an additional, limited opportunity for parties to make such counterproposals should be provided at this time. The

Stipulating Parties' proposal may be considered by the Commission after opportunity for comment, subject to the limitations on the scope discussed below. Subject to the concurrence of the Stipulating Parties, the stipulation is deemed to be a Joint Proposal.

This ruling's provision for comments on the Joint Proposal is not intended to reopen matters that have been decided, nor is it intended to provide an opportunity for further litigation of matters that have been fully addressed and are ready for decision. Further, Rulemaking (R.) 01-10-024 has been established as the forum for consideration of proposals for recovery of utility procurement costs. The following table lists such matters.

Subject*	Proceeding	Comment
Procurement reasonableness review (Item a.)	A.00-10-008	Resolved by D.01-11-029
Intermediate term power contracts (Item b.)	California Court of Appeal, 4th District; proposed settlement of petition for writ of review of D.01-01-061 and D.01-05-035.	Comments on proposed settlement filed July 10 and 27, 2001 in A.00-11-038, et al.
Utility-retained generation cost recovery (Item c.)	A.01-10-045/A.01-01-044	Draft decision issued by ALJ, reply comments due 11/15/01
SONGS ratemaking (Item d.)	A.93-12-025, et al., Petition for modification of D.96-04-059	Draft decision issued by Assigned Commissioner Duque, comment period has expired
Procurement cost recovery (Item e.)	R.94-04-031, et al., Motion for adoption of mechanism. Also, R.01-10-024	R.01-10-024 issued to establish cost recovery mechanisms for generation procurement
Defer cost-of service/PBR applications; merger savings (Item i.)	A.98-01-014, et al.	Resolved by D.01-10-030
Allocation of \$57.5 million of DWR payments to SDG&E	A.00-11-038, et al.	Per ruling of Assigned Commissioner Brown, allocation of DWR revenue requirements subject to evidentiary hearings

* Parenthetical references, where shown, are to the corresponding Implementing Decision as shown in Table 1 of SDG&E's July 16 motion for implementation of the MOU.

IT IS RULED that:

1. San Diego Gas & Electric Company's motion to strike the October 10, 2001 motion of Office of Ratepayer Advocates, Federal Executive Agencies, California Farm Bureau Federation, Aglet Consumer Alliance, Utility Consumers' Action Network, and The Utility Reform Network (Stipulating Parties) for adoption of stipulation is granted to the extent set forth in this ruling, and in all other respects is denied.

2. Subject to the limitations on scope discussed herein, and subject to the concurrence of the Stipulating Parties, the Stipulation attached to the Stipulating Parties' October 10, 2001 motion shall be deemed to be a Joint Proposal, and the concurring Stipulating Parties shall be deemed to be joint parties with respect to the Joint Proposal. Each Stipulating Party's concurrence shall be deemed to have been given unless notification to the contrary is provided to the assigned Administrative Law Judge within seven days of the date of this ruling. Such notification may be provided by e-mail to msw@cpuc.ca.gov.

3. Subject to the limitations on scope discussed herein, comments on the Joint Proposal may be filed by parties other than joint parties and are due 10 days after the date of this ruling. Reply comments may be filed and are due seven days thereafter. Comments and reply comments should state the issues, if any, for which the party believes that evidentiary hearings may be required.

Dated November 16, 2001, at San Francisco, California.

/s/ CARL WOOD

Carl Wood

Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Granting, In Part, Motion to Strike Motion for Adoption of Stipulation; Designating Stipulation a Joint Proposal; and Providing for Comments on all parties of record in this proceeding or their attorneys of record.

Dated November 16, 2001, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.